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OFFICE OF PETITIONS

In re Application of :
Schwarz et al. :
Application No. 10/069,760 : DECISION ON
Filed: September 23, 2002 : PETITION
Atty Docket No. 08215-517US1 :

This is a decision on the PETITION UNDER 37 CFR § 1.181 TO WITHDRAW HOLDING OF ABANDONMENT filed September 28, 2004 (and resubmitted February 9, 2005). This decision is made in light of the supplement to petition expressly requested by the undersigned and filed on October 31, 2006.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to file a timely and proper reply to the final Office action mailed December 30, 2003. This Notice set a three month shortened statutory period for reply, with extensions of time obtainable under 37 CFR §1.136(a). No reply having been received and no extensions obtained, the above-identified application became abandoned effective March 31, 2004. A courtesy Notice of Abandonment was mailed on July 28, 2004.

In response, applicants filed the instant petitions, asserting that the Office action was never received and requesting that the holding of abandonment be withdrawn. The petitions include a statement by the practitioner attesting to the non-receipt of the Office action. The statement is supported with the submission of a copy of the relevant docket records.

A review of the application file reveals no irregularities in the mailing of the Office action mailed December 30, 2003. Thus, there is a strong presumption that the correspondence was properly mailed to the applicant at the correspondence address of record. In the absence of demonstrated irregularities in mailing of this Notice, petitioner must submit evidence to overcome this presumption. The showing required to establish non-receipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. In addition, a copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

Petitioner has supported his claim of non-receipt with such evidence.

In view thereof, the notice of abandonment mailed July 28, 2004 is hereby VACATED, and the holding of abandonment is hereby WITHDRAWN.

The petition under § 1.181 is GRANTED.

No fee is required on petition under § 1.181.

Technology Center AU 2833 has been advised of this decision. The application file is, thereby, forwarded to the Technology Center's technical support staff to withdraw the holding of abandonment and for re-mailing of the final Office action mailed December 30, 2003 and for restarting of the period for reply.

Telephone inquiries related to this decision should be directed to the undersigned at (571) 272-3219.



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